IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Crl.MC.No. 2909 of 2007()

CC.18/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONERS/ACCUSED NO.1 AND 3:

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1. FIRDOUS MUSAFI, AGED 30 YEARS,
S/O.MUSTHAFA, FIRDOUS HOUSE,
KANNUKARA, KANNUR
(WITHIN KANNUR CITY POLICE STATION)

2. RAYEES MUSAFI, AGED 24 YEARS,
MUHAMMED RAYEES KARAYAH MOOSAPPINTAVIDA WRONGLY SHOWN AS IN C.C.NO.573/2005
S/O.MUSTHAFA, FIRDOUS HOUSE,
KANNUKARA, KANNUR
(WITHIN KANNUR CITY POLICE STATION)

BY ADV. SRI.C.KHALID
SRI.T.P.SAJID

RESPONDENTS/DEFACTO COMPLAINANT:

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1. ALAKALATH HASNA, AGED 24 YEARS,
D/O.UMMER, PRAVEEN HOUSE,
(PO) THOTTADAN, KANNUR
EDAKAD POLICE STATION

2. SUB INSPECTOR OF POLICE,
KANNUR CITY.

3. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2909 of 2007

Dated this the 27th day of November 2007

O R D E R

The petitioners are accused 1 and 3 in a prosecution under Section 498A read with 34 I.P.C. Altogether there were three accused persons. The second accused who was available for trial was tried, found not guilty and acquitted. The case against the petitioners was split up and the same is now pending as C.C.No.18/07. Consequent to non-appearance of the petitioners the case has been transferred to the list of long pending cases.

2. The petitioners have come to this court with a prayer that the proceedings against them may be quashed invoking the powers under Section 482 Cr.P.C. It was submitted at the Bar that the matter has been settled between the parties and the first respondent/ de facto complainant shall report such composition.

3. It is now submitted that the first respondent is not willing to appear before the court and report composition. The prayer for quashing of proceedings cannot, in these circumstances, succeed.

4. Alternatively, the learned counsel for the petitioners only prays that the petitioners may be permitted to raise the plea of discharge before the learned Magistrate. Cognizance has been taken on the basis of a final report submitted by the police and the petitioner's right to claim discharge under Section 239 Cr.P.C may be reserved and this Criminal Miscellaneous Case closed, submits the learned counsel for the petitioners.

5. The learned counsel for the petitioners further submits that warrants of arrest have been issued by the learned Magistrate against the petitioners. The petitioners are innocent. They are willing to surrender before the learned Magistrate and seek regular bail. But they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They, therefore, pray that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioners on bail when they appear and apply for bail.

6. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before

the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

7. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. They shall be entitled to plead discharge and needless to say such plea must be considered by the learned Magistrate and appropriate decision taken expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007